

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRUCE DOAK,

Petitioner,

v.

Civil Action No. 5:05CV175
(STAMP)

WILLIAM S. HAINES,

Respondent.

MEMORANDUM OPINION AND ORDER
ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

On October 17, 2005, the pro se petitioner, Bruce Doak, filed a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. On that same day, the petitioner filed a petition to proceed in forma pauperis with an accompanying financial affidavit. The case was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B).

Magistrate Judge Seibert considered the petitioner's petition to proceed in forma pauperis and submitted a report and recommendation. In his report, the magistrate judge recommended that the application be denied as moot.

Upon submitting this report, Magistrate Judge Seibert informed the parties that, if they objected to any portion of his proposed findings of fact and recommendation for disposition, they must file written objections within ten days after being served with a copy of the report. To date, no objections have been filed by the parties.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a de novo review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982); Web v. Califona, 486 F. Supp. 825 (E.D. Cal. 1979). Accordingly, this Court reviews the report and recommendation of the magistrate judge for clear error.

In his report, the magistrate judge states that the petitioner paid the \$5.00 filing fee on October 17, 2005. By paying this fee, the petitioner has rendered his application to proceed in forma pauperis moot. Thus, the magistrate judge correctly recommends that petitioner's application should be denied as moot. This Court finds no clear error in the findings made by the magistrate judge. Thus, this Court must conclude that the report and recommendation should be adopted in its entirety.

Conclusion

Because the parties have not objected to the proposed findings of fact and recommendation for disposition, and because this Court finds that the recommendation is not clearly erroneous, this Court hereby ACCEPTS and ADOPTS the magistrate judge's report and recommendation in its entirety. For the reasons stated above,

petitioner's application to proceed in forma pauperis is hereby
DENIED AS MOOT.

IT IS SO ORDERED.

The Clerk is directed to transmit copies of this order to the
petitioner and to counsel of record herein.

DATED: December 12, 2005

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE